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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

P.T.A.,

Plaintiff and Appellant,

v.

G.M.G.,

Defendant and Respondent.

B236950

(Los Angeles County
Super. Ct. No. BD468924)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Frederick C. Shaller and Thomas Trent Lewis, Judges. Affirmed.

P.T.A., in pro. per., for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

P.T.A. (Father) initiated the current appeal after the trial court entered judgment in favor of G.M.G. (Mother) in a child custody proceeding. Father contends the trial court did not have jurisdiction to decide this case under the provisions of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA; see Fam. Code, § 3400 et seq.).¹ We affirm the judgment.

FACTS

Father and Mother lived separate from each other in the Philippines at all relevant times, and never married. Father and Mother are the parents of A.G., born in 1998, and J.P.G., born in 1999, although the children's birth certificates list father as "unknown." Father, Mother, and the children all lived in the Philippines for a handful of years after the children were born. Mother lived with the children. Father did not live in the home of Mother and the children. Mother acted as the children's sole caretaker. At times of an unclear delineation, Father provided money to Mother which she used to pay for her house. Father paid tuition for private school for the children.²

In May 2007, Mother removed the children from the Philippines, and traveled with them to Hawaii and then to California, apparently without the requisite legal formalities. By early July 2007, Mother was being held in an immigration facility at Terminal Island, and the children were living with Mother's sister in the Los Angeles area.

¹ All further section references are to the Family Code.

² At a hearing in the trial court in July 2007 (*post*), Mother testified that there was "no relationship" between Father and the children. Father was married to another woman with whom he had children, and had other children with a number of "mistresses." Father's brother was a state governor in the Philippines; the family was politically powerful. Father would not allow his name on the children's birth certificates. The children were not allowed to acknowledge him as their father in public. He regularly went to Mother's home to see the children, but mostly would remain inside, out-of-sight. According to Mother, Father and his relatives were involved in criminal activities, including "planning to rig the election." Mother feared Father and his associates.

On July 9, 2007, Father filed a petition in the Los Angeles County Superior Court, seeking custody of the children. On the same date, Judge Frederick C. Shaller³ granted Father's ex parte application for an order for temporary custody of the children, pending a further hearing later that month. On July 17, 2007, Judge Shaller issued an order staying his July 9 order granting temporary custody to Father. On July 23, 2007, Judge Shaller issued an order appointing counsel to represent the children, and setting a hearing for July 26, 2007.

On July 26, 2007, Judge Shaller conducted an evidentiary hearing to address the issue of jurisdiction. Mother, who remained in an immigration facility, was sworn and testified by telephone. At the end of the hearing, Judge Shaller ruled that the California court was "going to accept [temporary emergency] jurisdiction" over the child custody matter. (See § 3424, subd. (a).) Judge Shaller stated the following reasons for his decision:

"The court finds there is an emergency under [section 3424, subdivision (a)] . . . [¶] The parties here are not part of a normal marital relationship. Therefore, [the children] are subject to several disabilities that would occur in the event that they were taken back to the Philippines. Number one, they are not part of [Father]'s marital family. Number two, they don't have a relationship with the family and . . . they don't even carry the recognition that they are the . . . child[ren] of [Father] or [bear] his last name. There are some obvious stigmas that will apply.

"The next point is that if [Father] does return them to the Philippines, he does not plan to have personal care of them but rather to farm out the care to a surrogate sister which I think is detrimental to the children who have obviously already missed their mother and want to be with their mother. I think that would cause harm to the children.

"And regardless of the fact that their material needs are being met quite well by [Father] with his wealth, the point is that we are talking about emotional well-being and I just don't see that it would be in their best interest to be allowed to go back to the Philippines.

³ Over the course of proceedings giving rise to this appeal, several different judicial officers became involved. For sake of clarity, we will use identifying references with the appellation "Judge" to indicate which court issued which ruling noted. Our informality is not intended to show any disrespect.

“There is no question that if the children are granted custody to Father that they would be taken back to the Philippines, and there is no question that that would be a political nightmare for [Mother] to ever have any custody with them again.

“And, in fact, I suspect that in the event that the children are taken back to the Philippines that that would permanently damage the child-mother relationship, so I don’t think that I can permit that to happen at least on the temporary basis.”

Judge Shaller ruled he would retain jurisdiction for 90 days (see § 3424, subd. (c) [when a California court assumes temporary emergency jurisdiction under the UCCJEA, it must specify a period for such jurisdiction]), and granted Mother custody of the children, which apparently meant only legal custody as Mother was still being detained in an immigration facility. Judge Shaller indicated the issue of jurisdiction would be reviewed at the end of the 90-day period, and that the 90-day period was being set to allow Father an opportunity for “commencing [a child custody] action in the Philippines.” Judge Shaller ordered that Father be granted visitation on specified terms.

Following the hearing before Judge Shaller on July 26, 2007, Father filed a child custody action in a Philippine court, which we summarize below.

On September 21, 2007, Judge Shaller conducted a status conference. At that time, Judge Shaller commented that the Philippines had “primary custody [*sic*] here, unless they defer custody [*sic*] after a hearing” Judge Shaller also indicated that, in the event a Philippine court assumed jurisdiction, it would be his “inclination . . . to defer to the Philippines.”

On October 10, 2007, in Regional Trial Court of the Republic of the Philippines, Judge Conrado F. Manauis issued a “writ of preliminary injunction” which effectively awarded Father temporary custody of the children pending a final resolution of the child custody issues. Judge Manauis’s order expressly acknowledged the then-pending action before Judge Shaller, but ruled that the California proceedings “did not preempt” the Philippine court from assuming jurisdiction because the Philippines was the children’s “home state,” they were born, raised and attended school there, and their activities there were “continuous, systematic and not casual or sporadic.” Upon making his decision,

Judge Manauis communicated with Judge Shaller by letter, stating that the Philippine court was asserting “sole and exclusive jurisdiction” of the child custody case. Judge Manauis’s letter detailed the legal and factual basis for his decision, including specific cites to Philippine statutes concerning the rights of children.

Mother filed a motion in the Philippines, seeking reconsideration of Judge Manauis’s decision to assume jurisdiction. Judge Manauis denied the request. Mother then filed an appeal. In December 2008, the Court of Appeals for the Republic of the Philippines denied the appeal.⁴

Meanwhile, on October 17, 2007, apparently upon learning of Judge Manauis’s jurisdictional decision in the Philippine court, Judge Shaller granted Father’s ex parte application for an order awarding custody of the children to him, and terminating California’s jurisdiction. On October 18, 2007, the children’s appointed counsel filed an ex parte application requesting that Judge Shaller vacate his prior day’s order because the Philippine court order was not a final adjudication. Judge Shaller granted the application, vacated his prior order, and appointed new counsel experienced in international family law cases to represent the children.

On October 24, 2007, Judge Shaller issued an order continuing the California court’s emergency jurisdiction until a further hearing on the issue of jurisdiction could be conducted. Judge Shaller set the hearing for January 29, 2008. Citing *Kristine H. v. Lisa R.* (2005) 37 Cal.4th 156 (*Kristine H.*), Judge Shaller explained that his ruling to continue temporary emergency jurisdiction in the California court was “based upon the consent of [Father] who filed his action, [resulting in] estoppel to deny [the court’s jurisdiction] to

⁴ In his opening brief on appeal, Father tells us that the Philippine court has entered a final judgment disposing of the child custody case, and that the judgment awards Father and Mother joint legal and physical custody of the children. The record before us on the current appeal contains no copy of such a judgment, and it not clear to us when, if ever, the Philippine court rendered a final child custody decision. In his opening brief, Father acknowledges that our court cannot consider matters not in record, but states he considers it appropriate to point out, in the interests of justice, that a judgment has been rendered.

make such a ruling, . . . and the basis previously indicated for temporary [emergency] jurisdiction”

Judge Shaller’s order further expressed his concern that the law of the Philippines was not substantially in accordance with the spirit and public policies of the UCCJEA. Judge Shaller stated his understanding that the Philippines had not signed the “Hague Convention on Abduction of Children.” Judge Shaller also stated a concern there were “various vagaries” of Philippine law that “call[ed] into question” how a Philippine court could find that Mother’s removal of the children from the country was something “other than her right as the parent of then unrecognized illegitimate children.” Judge Shaller set forth a number of issues he wanted the parties to address at a further evidentiary hearing set for January 2008, and ordered that discovery could be had on the issues.

Subsequent to his order of October 24, 2007, Judge Shaller was assigned to a new courtroom, and the case was reassigned to Judge Thomas Trent Lewis. In January 2008, Father filed a written motion pursuant to section 3445, asking Judge Lewis to register and enforce the October 2007 Philippine court order for temporary custody of the children. In April 2008, the children’s appointed counsel filed a written opposition. The matter was originally set on calendar for hearing on May 21, 2008. The record before us on appeal contains no materials shedding light on what happened in the child custody case thereafter for a period covering roughly the next year.

At a “status conference” held on June 25, 2009, Judge Lewis took up the matter of registering the Philippine court jurisdictional/temporary custody order of October 2007. After hearing arguments from the lawyers, Judge Lewis deferred making a decision on registering the out-of-state court order. Judge Lewis expressed his concern that it would be “inappropriate” for him to address whether Judge Shaller had properly ruled on October 24, 2007, that the California court would retain temporary emergency jurisdiction over the case. In Judge Lewis’s stated view, it would be improper for him, as Judge Shaller’s co-equal member of the same court, to make any ruling that would have the substantive effect of reversing Judge Shaller’s earlier ruling. At the conclusion of the hearing, Judge Lewis issued a minute order certifying an appeal concerning whether or

not the minor children had an independent right, through their court-appointed counsel, to request emergency jurisdiction based on their claim that they were entitled to asylum in the United States, even if Father was “not estopped” to challenge jurisdiction.

On November 24, 2009, Father filed a petition for writ of mandate in our court (case No. B220501), seeking to compel Judge Lewis to conduct a hearing and issue a definitive ruling on Father’s motion to register the Philippine court’s ruling of October 10, 2007. On December 22, 2009, we summarily denied Father’s writ petition on the ground it was untimely.

The record before us on the current appeal consists of an appendix submitted by Father. It contains no information whatsoever showing what occurred in the child custody case for a period of almost two years following December 2009, when our court denied Father’s writ petition.

Our court records show that on September 2, 2011, Judge Lewis entered a final judgment in the child custody case. The judgment indicates that it followed a contested trial on January 31, 2011. It indicates that Mother was present, and that Father was not present. The judgment awards sole legal and physical custody of the children to Mother. It orders Father to pay monthly child support, to pay Mother’s attorney’s fees, and to pay the attorney’s fees incurred by the County of Los Angeles for counsel appointed to represent the children. There are no materials in the record before us on appeal connected to the contested child custody trial -- no documents, no evidence, and no reporter’s transcript.

On October 27, 2011, Father filed a notice of appeal.

DISCUSSION

Father’s opening brief on appeal argues the final judgment entered in September 2011 must be reversed because the trial court did not have subject matter jurisdiction from the beginning over the child custody issues involved in this case. We disagree.

The Governing Law

Subject matter jurisdiction is the power of a court over a cause of action or to act in a particular way. (See *Greener v. Workers’ Comp. Appeals Bd.* (1993) 6 Cal.4th 1028,

1035.) Subject matter jurisdiction is conferred by constitutional or statutory law. (*Dial 800 v. Fesbinder* (2004) 118 Cal.App.4th 32, 42.) The superior court has subject matter jurisdiction in proceedings under the Family Code. (§ 200.)

Where a child custody matter in a California court involves the potential for jurisdiction in multiple forums, with the potential for multiple determinations by a California court and a court of another state,⁵ the superior court's jurisdiction is further prescribed by the UCCJEA. (See § 3421 et seq.) The UCCJEA's purposes are to avoid jurisdictional competitions and conflicts, promote interstate cooperation, litigate custody issues where a child and family have the closest connections, discourage ongoing conflicts over custody, deter abductions and unilateral removal of children from one state to another state, avoid the relitigation of another state's custody decisions, and to promote the exchange of information and other mutual assistance between courts of sister states. (See *Adoption of Zachariah K.* (1992) 6 Cal.App.4th 1025, 1032, citing the UCCJEA's predecessor statutory scheme.) In short, the UCCJEA contemplates that, even when concurrent subject matter jurisdiction over a child custody matter may be found to exist as between two states, only one state should exercise jurisdiction. (*Zachariah K.*, at p. 1038.)

Under section 3424, subdivision (a), a California court may exercise "temporary emergency jurisdiction" to make child custody determinations in potential multistate proceedings context "if the child is present in the state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subject to, or threatened with, mistreatment or abuse." Depending upon whether a previous child custody determination has been made by a court of a state having general jurisdiction over the child, or a child custody proceeding has been commenced in a court of a state having general jurisdiction over the child, a child custody

⁵ "A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying [the UCCJEA]." (§ 3405, subd. (a).) "A court of this state need not apply [the UCCJEA] if the child custody law of a foreign country violates fundamental principles of human rights." (§ 3405, subd. (c).)

determination made by a California court pursuant to the temporary emergency jurisdiction conferred by section 3424, subdivision (a), generally will only remain in effect for a limited period of time. (See § 3424, subds. (b), (c).) In other words, when a California court exercises temporary emergency jurisdiction over a child custody matter which is the subject of a sister state custody order or proceeding, this does not necessarily confer general jurisdiction upon the California court to make a permanent custody disposition. (*In re C.T.* (2002) 100 Cal.App.4th 101, 106-107, 112-114.) Before making a permanent custody disposition, a California court “must assert [general] jurisdiction under section 3421 or 3423, which are not emergency jurisdiction provisions.” (*Id.* at p. 113.)

The provisions governing whether general jurisdiction is conferred upon a California court over a child custody matter involving the UCCJEA are set forth in sections 3421 (initial jurisdiction) and 3423 (continuing jurisdiction). Section 3421 states:

“(a) Except as otherwise provided in Section 3424, a court of this state has jurisdiction to make an initial child custody determination only if any of the following are true:

“(1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.

“(2) A court of another state does not have jurisdiction under paragraph (1), or a court of the home state of the child has declined to exercise jurisdiction on the grounds that this state is the more appropriate forum under Section 3427 or 3428, and both of the following are true: [¶] (A) The child and the child’s parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence. [¶] (B) Substantial evidence is available in this state concerning the child’s care, protection, training, and personal relationships.

“(3) All courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is

the more appropriate forum to determine the custody of the child under Section 3427 or 3428.

“(4) No court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2), or (3).

“(b) Subdivision (a) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

“(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.”

Section 3423 largely provides that a California court will have continuing jurisdiction over a child custody matter where it had initial jurisdiction as set forth in section 3421.

Analysis

We find Judge Shaller correctly exercised temporary emergency jurisdiction in July 2007 under section 3424. Mother travelled to California with the children and was detained in an immigration facility. The need for protecting the children, who were essentially left with no legally recognized parental supervision, was evident. Father had filed a child custody petition. Judge Shaller promptly conducted a hearing to address jurisdiction. The evidence presented at the hearing showed that Father had no parent-child emotional relationship with the children.

This brings us to October 24, 2007, when Judge Shaller again ruled that he would continue exercising temporary emergency jurisdiction pursuant to section 3424. Although we have some misgivings about one part of Judge Shaller’s stated reasons for his ruling, we are not persuaded that Judge Shaller’s ruling must be reversed. Judge Shaller’s reliance on *Kristine H.*, *supra*, 37 Cal.4th 156 for the proposition that Father was estopped from denying the California court’s jurisdiction was misplaced. However, *Kristine H.* is not dispositive here. There, our Supreme Court held that estoppel prevents a party from contesting the *validity of a judgment* to which it stipulated. (*Id.* at pp. 162-166.) In other words, a party may not utilize our court system to seek a specific judgment, then, after receiving the judgment sought, challenge the very judgment obtained. The problem with applying this principle here is that, in October 2007, Father

was not contesting the validity of a judgment he obtained through our state's courts. Father's act of filing a child custody petition, while undoubtedly waiving any personal jurisdiction claim, had no bearing on the issue of whether Judge Shaller could properly exercise subject matter jurisdiction over the child custody action before him. Subject matter jurisdiction " 'either exists or does not exist' "; it "cannot be conferred by stipulation, consent, waiver or estoppel." (*In re A. C.* (2005) 130 Cal.App.4th 854, 860.)

We nonetheless affirm Judge Shaller's October 2007 jurisdictional order because we are satisfied that sufficient evidence of an emergency existed at that time, justifying the California court's continued temporary emergency jurisdiction under section 3424. We see no evidence in the record on appeal showing that Mother had been released by the immigration authorities as of October 2007. We have only a statement in Father's opening brief on appeal, telling us that Mother was initially held in Terminal Island, then transferred to another facility in the State of Washington. In October 2007, the Philippine court had ruled on jurisdiction, but the decision was still subject to review. It is a close call, but Father has not persuaded us that the ruling by Judge Shaller in October 2007 regarding temporary emergency jurisdiction was error as a matter of law.

This brings us to June 25, 2009, when Judge Lewis deferred a ruling on Father's motion to register the Philippine court jurisdictional order, and questioned whether it was appropriate for him to disturb Judge Shaller's temporary emergency jurisdictional ruling made in October 2007. Even if Father is correct that the record shows error in Judge Lewis's 2009 ruling, the record is inadequate to persuade us to reverse the final judgment entered in September 2011 and challenged on Father's current appeal.

We agree with Father that a California court's exercise of temporary emergency jurisdiction under section 3424 is intended to be reserved only for extraordinary circumstances. (*In re Joseph D.* (1993) 19 Cal.App.4th 678, 688.) We also agree with Father that, in making a permanent custody disposition, a California court must exercise general jurisdiction under section 3421 or 3423, which are not temporary emergency jurisdiction provisions. (*In re C. T., supra*, 100 Cal.App.4th at p. 113.)

The problem with Father's argument on his current appeal is that even if Judge Lewis erred in not reexamining Judge Shaller's prior temporary emergency jurisdiction decision, this does not establish that Judge Lewis did not properly exercise general subject matter jurisdiction in entering the final judgment in September 2011. It is a cardinal rule of appellate review that we presume the judgment is correct, and it is Father's burden to prove it is infected with jurisdictional error. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295.) The existence of a Philippine court order does not necessarily prove that Judge Lewis did not have subject matter jurisdiction. Father has provided us a record that is a blank slate from December 2009, when we denied his writ petition, through September 2011, when Judge Lewis entered the final judgment. As a result, we have no basis for determining that Judge Lewis improperly exercised subject matter jurisdiction or not presume that Judge Lewis acted without subject matter jurisdiction or facts that defeat Judge Lewis's subject matter jurisdiction. “ ‘ “[I]f the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed.” ’ [Citation.]” (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187.) Such is the case here.

DISPOSITION

The judgment is affirmed.

BIGELOW, P. J.

We concur:

RUBIN, J.

GRIMES, J.